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No. 84 —

IN THE

Supreme Court of the United States

October Term, 1984

V. P. GOTTSCHALL and V. P. GOTTSCHALL AS CUSTODIAN under the Uniform Gifts to Minors Act for NICHOLAS P. GOTTSCHALL and TERESA GOTTSCHALL, Minors, all in their own behalf, and for all others similarly situated,

Petitioners,

vs.

JONES & LAUGHLIN STEEL CORPORATION, Paul Thayer, Raymond A. Hay, Thomas C. Graham, G. E. Smith, and D. T. Kalil,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

Petition For A Writ Of Certiorari

Counsel of record for Petitioner:

V. P. Gottschall
9351 Tanbark Drive
Pittsburgh, PA 15237
412/456-4427

July 10, 1985

QUESTIONS PRESENTED FOR REVIEW

1. Without having an adversary hearing or making any findings of fact, is it constitutional under the First and Fourteenth Amendments to prohibit an attorney from discussing public documents with anyone (including his clients) or even with another attorney unless he has provided:

   a. written notice to opposing counsel of the proposed discussion with another lawyer
   b. the consent of the other attorney to be bound by the order
   c. assurance that the other attorney is not involved in any pending litigation against the defendant?

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No. 84/--/

SUPREME COURT OF THE UNITED STATES
October Term, 1984

V. P. GOTTSCHALL, et al.,

Petitioners,

vs.

JONES & LAUGHLIN STEEL CORPORATION, Paul Thayer, Raymond A. Hay, Thomas C. Graham, G. E. Smith, and D. T. Kalil,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

The petitioners respectfully pray that a writ of certiorari be issued to review the decree of the Supreme Court of the Commonwealth of Pennsylvania in this case.

OPINIONS BELOW

The Pennsylvania Superior Court's opinion is reported at 482 A.2d 979 (Pa.

Super 1984) and is reproduced at 3a.

The Opinion of Judge Silvestri is unreported but is reproduced at 20a.

JURISDICTION

The order of the Pennsylvania Superior Court was entered on September 7, 1984 and the motion for reargument was denied on November 9, 1984, (2a). The Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court on April 16, 1985 (1a). This Petition for a Writ of Certiorari has been filed within 90 days thereafter. The Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States, which provide as follows:

> Congress shall make no law. . . abridging the freedom of speech, or of the press,

U.S. Const., amend. I.

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., amend. XIV, Section 1.

STATEMENT OF THE CASE[1]

On October 29, 1980, V. P. Gottschall ("Mr. Gottschall") and other named plaintiffs (all holders of Jones & Laughlin Steel Corporation[2] (J&L) preferred stock) filed an action in equity and mandamus against J&L, Paul

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[1]Two cases, consolidated on appeal, involved different Orders in separate cases. To facilitate consideration, the early stages of each case are described separately.

[2]The LTV Corporation is the parent of J & L (now LTV Steel) and, other than wholly-owned subsidiaries, there are no affiliates known to Petitioner.

Thayer[3], D. T. Kalil[4] and other officials of The LTV Corporation ("LTV") in the Court of Common Pleas of Allegheny County. The defendants as a group are (as is the individual defendant in the second case) also referred to as LTV, the controlling entity. LTV owned all of J&L's common stock but, at the time the case was filed, none of its preferred stock. The case sought to compel compliance with 15 P.S. Section 1308 (access to corporate records by shareholders) and to protect the public shareholders from ongoing abuse by LTV. LTV had already settled

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[3]Mr. Thayer became Deputy Secretary of Defense and is presently in jail for obstructing justice.

[4]Mr. Kalil resigned as General Counsel of J&L when it was disclosed that he was not authorized to practice law. He presently works for a privately held scrap company doing business with J&L.

one case brought by Mr. Gottschall by agreeing to comply with the Pennsylvania Business Corporation Law and mailing business and financial information to the holders of the Preferred Stock. In that case the question of disqualification was not raised and no gag order was sought or entered.

On December 30, 1980, counsel for defendants ("LTV's Counsel") presented to Judge Silvestri (but not Mr. Gottschall) certain papers, including an affidavit from D. T. Kalil, in support of defendants' effort to disqualify Mr. Gottschall as a party-plaintiff. The theory advanced by LTV's counsel was that Mr. Gottschall's prior employment as an Assistant General Counsel of J&L barred him from participating in the case. LTV submitted a proposed Order of

Court which sealed all documents filed, or to be filed, in connection with the Petition for Disqualification and which prohibited Mr. Gottschall "from disclosing [them] to any third party."

That same day, Judge Silvestri conducted an in chambers meeting attended by LTV's counsel and by Mr. Gottschall; refused Mr. Gottschall's request for time in which to respond to the proposed Order of Court; refused Mr. Gottschall's request to be shown the documents which LTV's counsel had presented to Judge Silvestri; responded to Mr. Gottschall's objections that the proposed Order violated the First and Fourteenth Amendments by saying that Mr. Gottschall had no Constitutional rights; and entered the proposed Order of Court. No transcript or other record was made

of the in chambers meeting of December 30, 1980.

On December 29, 1980, Mr. Gottschall filed a complaint in the Court of Common Pleas of Allegheny County seeking the involuntary dissolution of the defendant, Jones & Laughlin Steel Corporation for fraud and failure to comply with statutory provisions requiring disclosure of financial information to shareholders, pursuant to 15 P.S. Section 2107.

On January 29, 1981, LTV's counsel gave Judge Silvestri a "Petition for Disqualification" seeking the disqualification of Mr. Gottschall on the same grounds asserted in the previous action; an affidavit from D. T. Kalil; and a similar order. That same day, Judge Silvestri conducted a meeting

in chambers which followed the same course described above. However, the proposed Order of Court had a limited exception permitting disclosure to prospective counsel after prior written notice to LTV's counsel and the agreement of prospective counsel to be bound by the Order. Again, no transcript or record of this meeting was made.

Contrary to the statement by the Superior Court (7a) Judge Silvestri had not scheduled a hearing on the Petitions to Disqualify when appeals (based on the Constitutional issues) from the two orders were timely taken in January and February 1981. Not until March 26, 1981 (three months after the entry of the first order) did Judge Silvestri indicate that a hearing on the Petitions for Disqualification would be held. Mr.

Gottschall then applied to the Pennsylvania Superior Court for a stay, which was granted, of that hearing because of the constitutional problems.

On October 12, 1981 Mr. Gottschall submitted Rectum Rogares in both cases requesting Judge Silvestri to "Do Right" by filing opinions as required by Pennsylvania Rule of Appellate Procedure 1925 to permit the scheduling of the appeals for argument. On October 20, 1981 Judge Silvestri denied the Rectum Rogares.

Without an opinion below the appeals had not been scheduled for argument. On October 31, 1983 Mr. Gottschall filed an action in Mandamus, invoking the original jurisdiction of the Supreme Court of Pennsylvania, to compel Judge Silvestri to file an

opinion. In response to that suit Judge Silvestri filed a Memorandum Opinion on November 21, 1983.

The Memorandum Opinion states that the January 29, 1981 Order is one

> "enjoining the plaintiff [Mr. Gottschall] and any counsel of record from discussing the sealed portion of the record with any third party, with the exception of a limited class of attorneys."

The opinion did not address the Constitutional questions but its filing permitted the appeals to be heard.

After the appeals were heard in May, 1984 and the Constitutional issues argued, on September 7, 1984 the Superior Court quashed the appeals on the basis that the orders were not final and the court lacked subject matter jurisdiction. The court did not reach the Constitutional issues. It held

> "Since this court lacks subject matter jurisdiction, we cannot consider the merits of these consolidated appeals." but added "Appellant suffers no irreparable injury . . . because the sealed information will remain available for future dissemination." and "They [the orders] are a means to avoid potential contravention of the policies underlying canons 4 and 9 of the Pennsylvania Code of Professional Responsibility". (18a and 19a).

A Petition for Reargument was timely filed on September 21, 1984. That Petition was denied, per curiam, on November 9, 1984. On December 3, 1984 Mr. Gottschall timely filed, with the Pennsylvania Supreme Court, a Petition for Allowance of Appeal from the November 9, 1984 decision. On April 16, 1985 that Petition was denied, per curiam.

REASONS FOR GRANTING THE WRIT

Review on certiorari is merited under Rule 17.1 of the Rules of the

Supreme Court. The decision of the Pennsylvania Superior Court departs from the decisions of this Court in permitting entry of a broad ban on expression, including a prior restraint on communication with prospective counsel, in the absence of the specific factual findings needed to support such a ban. Moreover, the lower courts ignored the First Amendment interest in discussion of previously published information related to matters of great public concern - the appointment of Mr. Thayer to a high political post, his subsequent resignation, and his recent incarceration for obstruction of justice.

I. The Lower Court Did Not Apply the Procedural Safeguards Which This Court Requires to Support Any Restraint on Expression.

1. Prior Restraint

A prior restraint constitutes "one of the most extraordinary remedies known to our jurisprudence." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 562 (1976). It is the "most serious and the least tolerable infringement on First Amendment rights." Id. at 559. In Vance v. Universal Amusement Co., Inc. 445 U.S. 308, 315-16 (1980) the Court said the "burden of supporting an injunction against a future exhibition is even heavier than the burden justifying the imposition of a criminal sanction for a past communication." and cited other cases for the proposition that "a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand."

A prior restraint "must fit within

one of the narrowly defined exceptions to the prohibition against prior restraint . . . " Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975).

> "[T]he publication must inevitably, directly, and immediately cause the occurence of an event kindred to imperiling the safety of a transport already at sea. . . In no event may mere conclusions be sufficient . . . and not less so because the restraint was [allegedly] justified as necessary to afford the courts an opportunity to examine the claim more thoroughly."

New York Times Co. v. United States, 403 U.S. 713, 726-28 (1971).

In the less burdened context of a closure order, Waller v. Georgia, 81 L. Ed 2d 31 (1984), held the court must: 1) find an overriding interest in secrecy rather than disclosure; 2) support that conclusion with specific findings on the

record; 3) consider alternative methods of control; and 4) narrowly tailor the control. Judge Silvestri did not even meet any of those tests. He reversed the prior restraint presumption that disclosures should be punished after they are made and found to be improper rather than prohibit them from being made.

Even after three years and repeated briefing of the Constitutional issues, when Judge Silvestri was finally forced to write an opinion in 1983 he did not attempt to comply with the Constitutional requirements. Significantly, in a fact situation similar to that before this Court the court in Pennsylvania v. Buehl, 462 A.2d 1316, 1323 (1984 Pa. Super) held that an opinion filed after the appeal was taken on a closure order was too late and

was "in essence an after-the-fact, ex parte, statement . . . The court must state before ordering closure why it considers alternatives to closure unsatisfactory." The only matter in the Memorandum Opinion which could be considered to be a specific finding of fact is

> "it appearing from the record in the proceedings that the plaintiff, V. P. Gottschall immediately prior to the filing of the within proceedings, was Assistant General Counsel of the defendant (emphasis added)."

Judge Silvestri's belated finding is not relevant to the Constitutional issue which requires a specific finding of harm and is wrong. J&L did not even allege that Mr. Gottschall was Assistant General Counsel "immediately prior to the filing" and had stated

that Mr. Gottschall's employment with J&L terminated on January, 15, 1979 - twenty-three months before the "filing of the within proceedings." He did not consider alternate methods of control and used a broad brush rather than narrow tailoring.

Given the additional fact that most of the documents placed under seal are public documents, the egregious violation of rights becomes self-evident. A discussion with counsel of a newspaper article published nearly two years after the termination of any relationship with J&L cannot constitute even a "potential contravention" of any policy. In this case no basis, principled or otherwise, was given nor could be given for prohibiting discussion of newspaper articles without

prior notice to opposing counsel.

2. The Orders Were Entered With No Finding of Harm Which Could Be Caused by Discussion of Public Material.

In discussing the sealing of records, this Court has said that each case must be resolved by "weighing the interests advanced by the parties in light of the public interest and the duty of the courts." See Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978). However, it is clear that Judge Silvestri failed to weigh the interests advanced by one of the parties - Mr. Gottschall was not permitted to examine the documents.

The most chilling indictment of the ex parte nature of the proceedings below is illustrated by the status of Mr. Kalil. Mr. Gottschall was not allowed to cross examine him. LTV failed to

tell the Judge that it knew Mr. Kalil had been found "unfit to be entrusted with professional or judicial matters or to aid in the administration of justice". See In the Matter of David T. Kalil, No. 84 785, Wayne Co. Cir. Court Mich. 1957. Mr. Gottschall had to develop that information, through the Michigan Bar, on his own.

In a less dramatic situation, involving an affidavit by a lawyer rather than an affidavit by someone acting as an attorney, the Court in In re Iowa Freedom of Information Council, 724 F.2d 660, 662 (8th Cir. 1983) held

> "In such an important matter, courts should not simply take representations of interested counsel on faith."

Had he been permitted to cross-examine Mr. Kalil, Mr. Gottschall would

have: Brought out that Mr. Kalil was suspended from the practice of law in Michigan, the jurisdiction in which he asserted he was admitted to practice (which Mr. Gottschall established late in 1983); or Mr. Kalil would have committed perjury. As alleged in his suspension proceedings, David T. Kalil's

> "conduct is contrary to justice, ethics, honesty, and good morals, and is prejudicial to the proper administration of justice."

The decision of the Pennsylvania Superior Court is also in direct conflict with decisions of the federal appellate courts governing the issuance of judicial orders restraining expression. For example, the Sixth Circuit, in WXYZ, Inc. v. Hand, 658 F.2d 420, 426 (6th Cir. 1981), relying

upon Nebraska Press, concluded that mere "surmise or conjecture that untoward consequences may result" cannot justify a judicial restraint upon publication. Similarly, when a former business executive sought to enjoin a television broadcast, the Ninth Circuit concluded that such an order would be unconstitutional because of the absence of a specific showing of harm. Goldblum v. National Broadcasting Corp., 584 F.2d 904, 906-07 (9th Cir. 1978). The concept of avoiding merely a "potential", as opposed to a finding of a, "contravention of policies" as advanced by the Pennsylvania Superior Court is an improper substitute for the specific showing of harm required by decisions of this Court and other courts.

Indeed, given the fact that most of the documents under seal are public documents, the egregious nature of the error becomes even more self-evident.

3. There Were No Findings Concerning Alternate Means of Controlling Any Allegedly Improper Use of Information.

The Orders cannot meet the standard set forth in Coles v. Marsh, 560 F. 2d 186, 189 (3rd Cir.) cert. denied 434 U.S. 985 (1977):

> "[T]he district court must find that the showing [of the particular abuses threatened] provides a satisfactory basis for relief * * * giving explicit consideration to the narrowest possible relief which would protect the respective parties."

In contrast, neither court below utilized or discussed the procedure outlined by the court in Publicker Industries v. Cohen, 733 F.2d 1059 (3rd Cir. 1984) - an in camera inspection,

with counsel present and on the record. However, Judge Silvestri had rejected Mr. Gottschall's request for a similar procedure. The Publicker court reversed the gag order

> "because the district court failed to articulate overriding interests based on specific findings . . . and failed to consider less restrictive means to keep this information from the public, we need not reach the merits of this question. These errors alone constitute an abuse of discretion." at (1074).

In stark contrast with that standard Judge Silvestri made no effort to draw the orders narrowly (he merely signed the proposed orders), did not consider (let alone give explicit consideration to) less restrictive alternatives, and made no findings of any threatened abuse.

Under the most charitable view, if

the documents appended hereto as Exhibits A and B were discussed with counsel without prior written notice to LTV's counsel, they could not possibly contravene any "policy." They were in fact previously disseminated and remain in the public domain. Given that undisputable truth, it cannot be seriously maintained that the Orders were "narrowly drawn and precise" or that there are not "alternative means of protecting the public interest which intrude less directly on expression."

As the court in Commonwealth v. Trinkle, 124 A.2d 191 (1921) said, procedural safeguards are necessary to prevent a "strictly private trial, or star chamber proceeding. . . " using "statements not deserving the name of evidence, oft-times through the caprice

of the ruling monarch." The need for procedural safeguards was confirmed in Gulf Oil Company v. Bernard, 452 U.S. 89, 104 (1981) where this Court stated specifically that "the mere possibility of abuses does not justify the routine adoption of a communication ban."

The concept of avoiding merely a "potential contravention of policies" as advanced by the Pennsylvania Superior Court is diametrically opposite to holdings of this Court and should be rejected. The orders are contrary to the Constitution, case law, and fundamental rules of fair play. They should be vacated.

II. The Decision Below Is Contrary to Numerous Holdings that Discussion of Information on the Public Record Cannot be Enjoined.

1. The Courts Below Incorrectly Made

Their Decisions on the Procedural Point and Ignored the Constitutional Issues.

After he was sued by Mr. Gottschall, Judge Silvestri explained his reason for not filing the opinion required by Court rules, by saying he believed the Orders were not final and he did not believe he needed to write an opinion. In contrast this Court found that fragile First Amendment rights are often lost or prejudiced because of delay. Gulf Oil Co. v. Bernard (supra).

The Superior Court, without any cited authorities, said Mr. Gottschall

> "suffers no irreparable injury . . . because the sealed information will remain available for future dissemination" (18a).

On the other hand, the court in Associated Press v. United States District Court, 705 F.2d 1143 (9th Cir.

1983) held that a forty-eight hour delay to weigh Sixth Amendment rights against the right of access was too long and said

> "the effect of the order is a total restraint on the public's first amendment right of access even though the restraint is limited in time" at 1147.

This Court's opinion in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) addressed the question of finality. The decisions in North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc. 414 U.S. 156 (1973) and Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) were cited for the proposition that "[I]t would be intolerable to leave unanswered . . . an important question . . . under the First Amendment." at 484, 485. See also National Socialist Party of America v.

Village of Skokie, 432 U.S. 43, 44 (1977) which held that order was:

> "a final judgment for purposes of our jurisdiction, since it . . . will deprive them of rights protected by the First Amendment. . ."

If the Orders which enjoin Mr. Gottschall from communicating with others should remain in effect without correction on review until such time as a "final order on the merits" shall have been entered, then the fundamental First Amendment rights of Mr. Gottschall, the class he represents, the administration of justice (because portions of the records of Messrs. Thayer and Kalil cannot be given to the authorities by Mr. Gottschall) and the public shall have been further and irreparably harmed. The First

Amendment does not become irrelevant because Mr. Gottschall is an attorney.

2. Most of the Material Covered by the Orders Was Filed by Respondents with the Securities and Exchange Commission or Has Been Published in Newspapers

In Nixon v. Warner Communications, Inc., supra at 597, this Court said:

> It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.

The documents in this case include an old, 1974, proxy statement, a 1976 press release (exhibit A) and a newspaper article published in the winter of 1980 (exhibit B).

Moreover, unlike the situation presented to this Court in Seattle Times Co. v. Rhinehart, 104 S. Ct. 2199 (1984), the documents involved in this

case were not secured from LTV by the discovery process. Instead LTV, Mr. Thayer, and Mr. Kalil for their own purposes, put various public documents before the trial judge and asked that Mr. Gottschall be "gagged." Before Mr. Gottschall was permitted to see the documents, the trial judge entered the order which not only placed the documents under seal but imposed a restraint on Mr. Gottschall's discussing those public documents and his then unwritten response to the Petition to Disqualify - even with counsel!

U.S. v. Marchetti, 466 F.2d 1309 (4th Cir) cert. denied 409 U.S. 1063 (1972) held that the First Amendment precludes restraints with respect to unclassified, disclosed information.

See also Maryland v. Baxter, 7 Med. L. Repts 1374 (1981) where a gag order was stricken because the contents had already been widely publicized and Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977) where it was held that once truthful information was publicly revealed a court could not restrain its dissemination.

In Smith v. Daily Mail Publishing, 443 U.S. 97 (1979) this Court held that once a document is in the public domain a court may not constitutionally restrain its dissemination.

The fact that a major local employer and an arrogant leader of the military - industrial complex, who is presently in jail for obstruction of justice, sought the gag order (knowing normal litigation could undermine their

illegal schemes) does not alter its unconstitutionality. Messrs. Thayer and Kalil found out that, even with the gag orders in place, some of the truth has already come out. They are not above the law even though it took a three year investigation by Mr. Gottschall and the government of the United States, while these gag orders were in effect, to incarcerate Mr. Thayer and remove Mr. Kalil as J&L's General Counsel. So too should the LTV Orders be subjected to the rule of law. Abridging Mr. Gottschall's rights to discuss public documents constitutes an absurd exercise in futility because the truth can and will be told.

III. The Pennsylvania Superior Court Failed to Consider the Effect the Orders Had on Petitioners Ability to Secure Counsel.

The restrictions on Mr. Gottschall's right to secure counsel is another urgent reason justifying the assumption of plenary jurisdiction. In Doe v. District of Columbia, 699 F.2d 1115, 1119 (1983 D.C. Cir.) the court said "the right to a hearing would be meaningless were the litigant forbidden to obtain the assistance of a lawyer" and cited Powell v. Alabama, 287 U.S. 45 (1932) for the proposition that such a situation would be a denial of due process. Allowing the orders below to remain in effect would sanction the denial of Mr. Gottschall's Constitutional right to due process and the equal protection of the laws concerning the right to counsel as well as his First Amendment rights. Judge Silvestri's belated Memorandum Opinion

says that Mr. Gottschall is enjoined from talking to any third party "with the exception of a limited class of attorneys." However, the reality is the "limited class" is effectively every attorney because the order only permits discussion with those attorneys specified in prior written notice to LTV's counsel. The assertion by LTV's counsel that "Unless and until he [Mr. Gottschall] would be disqualified as counsel, he presumably has not been deprived of adequate representation" further illustrates the blindness that arrogance breeds.

The Superior Court would not reverse the orders even though they prevent Mr. Gottschall from discussing both public documents and his response to the Petition to Disqualify with

prospective counsel unless he: 1. provided prior written notice to LTV's counsel; 2. prospective counsel was not involved in litigation with J&L; and 3. prospective counsel agreed to be bound by the terms of the Order. When a litigant can be denied his right of freedom of speech and his right to counsel it is an issue of dramatic public importance deserving consideration by this Court.

Mr. Gottschall's affidavit concerning the effect of the Orders on his ability to secure counsel was filed below and is reproduced as Exhibit C.

CONCLUSION

The speculation used by the Pennsylvania Superior Court would justify entry of a ban upon any communication. It upholds the sealing

of newspaper articles published years after Mr. Gottschall left J&L, did not consider less restrictive means, and did not find any harm which would be caused by discussion with counsel of public information concerning individuals involved in matters of ongoing public interest. Paul Thayer, who resigned as Deputy Secretary of Defense of the United States because of an investigation by the Securities and Exchange Commission, pled guilty to obstruction of justice, has been sentenced to four years in jail for obstruction of justice, and will be seeking parole. Mr. Smith has been criticized by the U.S. Government for failing to protect the shareholders of LTV in connection with Mr. Thayer's

transgressions against LTV. David T. Kalil resigned as the Vice President and General Counsel of Jones & Laughlin when it was disclosed that he was not authorized to practice law but is now seeking readmission to the bar.

In conclusion, the decision below utterly fails to address the significant First and Fourteenth Amendment problems inherent in any judicial order that forbids discussion of public documents with prospective counsel unless opposing counsel receives prior written notice of that discussion. Mr. Gottschall did not forfeit his Constitutional rights vis a vis J&L by having worked for J&L.

For these reasons, a writ of certiorari should be issued to review

the judgment and opinions below.

DATED July, 10, 1985.

Respectfully submitted,

_____

V. P. Gottschall

9351 Tanbark Drive

Pittsburgh, PA 15237

412/456-4427

APPENDIX

The Supreme Court of Pennsylvania
Western District

Carl Rice, Esq.
Prothonotary

801 City-County Building
Pittsburgh, PA.
15219

Irma T. Gardner
Deputy Prothonotary

April 17, 1985

In Re: V. P. Gottschall, etc., et al. v. J&L Steel Corp., et al. No. 396 W. D. Allocatur Docket 1984

"April 16, 1985
Petition Denied
Per Curiam"

The Superior Court of Pennsylvania
Sitting at Pittsburgh

J. Haniel Henry
Prothonotary

801 City-County Building
Pittsburgh, PA.
15219

Irma T. Gardner
Deputy Prothonotary

November 9, 1984

In Re: Gottschall, et al. vs. Jones & Laughlin Steel, et al. Nos. 59 & 267 Pittsburgh, 1981

"AND NOW, this 9th day of November, 1984, appellant's application for reargument is denied.

Per Curiam"

V.P. GOTTSCHALL, Appellant,

v.

JONES & LAUGHLIN STEEL CORPORATION.

V.P. GOTTSCHALL, and V.P. Gottschall, as custodian under the Uniform Gifts to Minors Act for Nicholas P. Gottschall and Teresa Gottschall, Minors, All In Their Own Behalf, and for all others similarly situated

v.

JONES & LAUGHLIN STEEL CORPORATION, A Corporation, and Paul Thayer, Raymond A. Hay, Thomas C. Graham, G.E. Smith and D.T. Kalil.

Appeal of V. P. Gottschall.

Superior Court of Pennsylvania.

Argued May 15, 1984.

Filed Sept. 7, 1984.

Reargument Denied Nov. 9, 1984.

V. Gottschall, Pittsburgh, in pro. per.

Donald C. Winson, Pittsburgh, for appellee.

Before CAVANAUGH, POPOVICH and HESTER, JJ.

HESTER, Judge:

Appellant, as both named party-plaintiff and counsel of record for the class of plaintiff shareholders, instituted a class action against his former employer, Jones & Laughlin Steel Corporation (hereinafter referred to as "J & L"), and five individuals who were officers of J & L and/or its parent. Appellant was an attorney for J & L from 1969 until his termination in 1979. From 1971 through 1979 he was an Assistant Secretary of J & L and from 1976 through 1979 he was an Assistant General Counsel of J & L. Appellant had responsibility for J & L's compliance with securities law.

Appellant, at the time this suit was initiated, October 29, 1980, was a preferred shareholder in J & L along with his two children. Appellant alleges in this class action, inter alia, appellees depressed the price of the preferred stock, failed to disseminate information and issued erroneous material information to the class.

As both plaintiff and counsel, appellant subsequently filed another lawsuit against J & L requesting the involuntary dissolution of J & L pursuant to § 2107 of the Pennsylvania Business Corporation Law. 15 P.S. § 1001 et seq.

In both suits appellees petitioned the lower court to disqualify appellant as plaintiff and counsel of record. Appellees assert appellant's lawsuits

breach the attorney-client privilege and undermine the Pennsylvania Code of Professional Responsibility, Canons 4 and 9. Canon 4 prohibits an attorney from using client confidences in suits against a former client. Canon 9 prohibits the appearance of impropriety.

In support of its petitions to disqualify appellant, appellees submitted to the trial judge appellees' affidavits and documents from J & L's files to demonstrate that appellant's past representation of J & L was substantially related to the subject matter of the present actions. Subsequently, appellant filed in both suits petitions to disqualify counsel for J & L.

The trial judge scheduled a hearing to resolve the petitions to disqualify and stayed both actions

pending resolutions of the petitions. Concomitantly, the trial judge issued protective orders in both suits to insure the confidentiality of J & L's documentation of their espoused attorney-client privilege until the hearing conducted to resolve the matters set forth in the petitions.

Appellant then appealed the protective orders in both actions. Upon appellant's motion, this court stayed the trial court's hearing to resolve the petitions to disqualify. Appellees moved to quash the appeals on the basis that they were interlocutory. This Court directed the parties to brief and argue the jurisdictional propriety of the appeals together with the merits.

This Court consolidated the appeal in the action requesting involuntary dissolution of J & L (No. 267 Pittsburgh, 1981) with the appeal in the class action (No. 59 Pittsburgh, 1981).

The protective order at No. 59 Pittsburgh, 1981 seals those portions of the record pertaining to appellee's petition to disqualify appellant. Additionally, appellant or any other counsel of record for plaintiffs is prohibited from disclosing the contents of the sealed portions to third parties.[1] At No. 267 Pittsburgh, 1981,

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[1]The Order on Appeal at No. 59 Pittsburgh, 1981 reads as follows:

AND NOW, to wit, this 30 day of December, 1980, upon consideration of defendant's December 29, 1980 Motion, it is hereby ordered that, until further order of court: (1) defendants' Petition for Disqualification, the Affidavit of D.T. Kalil with attached exhibits, the Affidavit of J.P. Kelly and defendants' Brief supporting its Petition for Disqualification as well as any responsive proceedings relating to

the order prohibits disclosure to third parties, but excepts potential counsel for appellant who agree to be bound by the order, however, written notice must be given to appellees before appellant consults with proposed counsel.[2]

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defendants' Petition for Disqualification be kept confidential and under seal such that they are not made part of the public record in this case, and (2) Mr. Gottschall and any other counsel of record for plaintiff in this action refrain from disclosing to any third party the nature or contents of those parts of the record made confidential by the within order.

By the Court
/s/ Silvestri, J.

[2]The order on Appeal at No. 267 Pittsburgh, 1981 reads as follows:

AND NOW, to wit, this 29th day of January, 1981, upon consideration of the January 29, 1981 Motion filed by Jones and Laughlin Steel Corporation ("J & L"), it is hereby ordered that, until further order of court: (1) J & L's Petition for Disqualification of Mr. Gottschall, the Affidavits of D.T. Kalil and J.P. Kelly with attached exhibits and J & L's Brief supporting its Petition for Disqualification of Mr. Gottschall, be kept confidential and under seal such that they are not made part of the public record in this case

Appellant argues the protective orders are final, collateral and injunctive, and therefore, this Court has subject matter jurisdiction to hold the orders are a restraint on appellant's First Amendment rights and his right to secure counsel.

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and (2) Mr. Gottschall and any other counsel of record for Mr. Gottschall in this action refrain from disclosing to any third party the nature or contents of those parts of the record made confidential by the within order; provided, that Mr. Gottschall and any other counsel of record for plaintiff in this action may disclose the nature or contents of those parts of the record made confidential by this order if (i) such disclosure is limited to an attorney being consulted for purposes of possibly becoming additional counsel of record for plaintiff in this action, (ii) such disclosure is made only after prior written notice to counsel of record for J & L of the name and address of the attorney to whom such disclosure is proposed to be made and (iii) such disclosure is made only to an attorney who is not presently involved in any other litigation concerning J & L and who agrees to be bound by the terms of this order.

By the Court
/s/ Silvestri, J.

We cannot agree. Appellate jurisdiction attaches only to "final orders", 42 Pa.C.S.A. §§ 702, 742, and in determining what constitutes a final order we consider the principles set forth by the United States Supreme Court in Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949), and by the Pennsylvania Supreme Court in Piltzer v. Independence Federal Savings and Loan Assn., 456 Pa. 402, 319 A.2d 677 (1974) and Pugar v. Greco, 483 Pa. 68, 394 A.2d 542 (1978).

A final order is one which ends the litigation, or alternatively, disposes of the entire case. Piltzer, supra. The protective orders do not preclude appellant from further litigating his actions in the lower court, but rather, provide safeguards

necessary to protect appellees' asserted attorney-client privilege pending appellees' actual proof of the existence of that privilege.

We must consider the practical ramifications of the orders to ascertain if they terminate appellant's actions. Conaway v. 20th Century Corp., 491 Pa. 189, 420 A.2d 405 (1980); Gordon v. Gordon, 293 Pa. Super.Ct. 491, 439 A.2d 683 (1981), aff'd. mem., 498 Pa. 570, 449 A.2d 1378 (1982).

In Conaway, the trial court sustained defendant's preliminary objections in the nature of a demurrer to plaintiff's complaint. The trial court dismissed plaintiff's action, and sustained the demurrer "in accordance with the above opinion." The above

opinion invited, via "reconsideration", the plaintiff to add to the record. The Pennsylvania Supreme Court stated:

> Hence, whatever finality the court expressed on the one hand, it destroyed on the other, and the practical ramification of the order of September 29, 1975 was not to put Conaway out of court. Accordingly, the order of September 29, 1975 was not final. [emphasis added].

491 Pa. at 197, 420 A.2d at 409.

Instantly, the orders restrict for a limited period and to a limited class appellant's dissemination of the protected information. Appellant still has the ability to litigate the merits of the petitions to disqualify. The orders sufficiently insure appellant's right to secure counsel. Appellant may in fact be disqualified based on the protected information, but that is the

issue to be decided at the pending lower court hearing on the petitions to disqualify.

> The appealability of an order or judgment must be determined as of the time the appeal therefrom is filed. If the order appealed from is interlocutory, the appeal may be quashed immediately upon motion. See: Pa.R.A.P. 1972. In such cases, the lack of jurisdiction to entertain an appeal from the interlocutory order cannot be corrected by subsequent events in the same action.

Praisner v. Stocker, 313 Pa. Super.Ct. 332, 343, n. 4, 459 A.3d 1255, 1261, n. 4 (1983).

Appellant propounds that his communication with the press, other attorneys or experts, etc., limited by the protective orders, is a matter which is separable from and collateral to the main cause of actions and therefore, the orders are final as determined by the

three-part test announced in Cohen v. Beneficial Industrial Loan Corporation, supra.

> In Cohen, the issue was the appealability of an order, collateral to a stockholders' derivative action, which denied a petition to require the plaintiff to post security to cover defendant's expenses and counsel fees if plaintiff's action proved unsuccessful. The Supreme Court held the order appealable because the claim adjudicated was "separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.

Praisner v. Stocker, 313 Pa.Super.Ct. at 342, 459 A.2d at 1261 (quoting Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. at 546, 69 S.Ct. at 1225, 93 L.Ed.2d at 1536).

Appellant's interpretation of the protective orders is too restrictive. Appellant considers only the fact that information is placed under seal and

that his ability to disseminate that information is restricted. Appellant fails to acknowledge the significance the information may have to the underlying actions. The information placed under seal has the potential to determine the ultimate issues of liability, or alternatively to disqualify appellant from pursuing the merits of the actions. Therefore, the orders directly relate to the main causes of action.

The Cohen test is applicable only to determine the appealability of an order which is collateral to the main action. Praisner, supra. Since appellant fails to satisfy the first requirement in the three-part Cohen test, it is not necessary to consider herein the remaining two requirements.

Appellant erroneously defines the protective orders as injunctions and therefore, appealable as of right pursuant to Pa.R.A.P. 311(a)(4). Appellant relies on Rosenzweig v. Factor, 457 Pa. 492, 327 A.2d 36 (1974), as authority for his position that the protective orders maintain the status quo and therefore, are special injunctions.

The lower court in Rosenzweig, Id., failed to follow the mandatory procedure before issuing the special injunction directing appellant to deposit the controverted funds in escrow. Although ample time existed, the injunction was issued without a hearing or prior notice, and without a showing of irreparable injury.

Appellant suffers no irreparable injury. This Court's jurisdiction cannot automatically be conferred because unlike the funds in Rosenzweig, Id., the sealed information will remain available for future dissemination if appellant prevails on appellees' petitions to disqualify appellant. Appellant cannot complain that the lapse of time will nullify the importance of the protected information, as he requested the stay of the hearing on the petitions to disqualify.

The protective orders are not injunctions as they acknowledge the continuing attorney-client privilege. They are a means to avoid potential contravention of the policies underlying Canons 4 and 9 of the Pennsylvania Code of Professional Responsibility.

Since this Court lacks subject matter jurisdiction, we cannot consider the merits of these consolidated appeals.

Orders affirmed. Appeals quashed.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

V. P. GOTTSCHALL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. GD80-32049
	)	
JONES & LAUGHLIN STEEL CORPORATION,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

SILVESTRI, J.

The plaintiff filed an appeal on February 24, 1981 from an order of this court dated January 29, 1981. Said order was a protective order sealing a portion of the record in the case and enjoining the plaintiff and any counsel of record from discussing the sealed portions of the record with any third party, with the exception of a limited class of attorneys, in order to permit the plaintiff to proceed with the preparation and trial of the case. For

reasons which are not apparent, although the order was entered January 29, 1981 and an appeal was timely taken, the record was not forwarded to the Superior Court of Pennsylvania. With the filing of this memorandum opinion, this court has directed that the Prothonotary of the Court of Common Pleas of Allegheny County to forward the record of this case to the Superior Court.

This court did not file an opinion in the first instance by reason of its opinion that the order was interlocutory and not appealable.

Notwithstanding the opinion of this court that the order is interlocutory, it appearing from the record in the proceedings that the plaintiff, V. P. Gottschall, immediately prior to the filing of the within proceedings, was Assistant General Counsel of the

defendant and participated directly in the matters forming the basis of the within lawsuit together with the other allegations of the defendant's motion to seal part of the record, all of which this court found is credible, the order of January 29, 1981 was properly entered.

Dated this 21st day of November, 1983.

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

V. P. Gottschall, et al.	)	
	)	
Appellants	)	
	)	
vs.	)	No. 59
	)	Pittsburgh,
	)	1981
JONES & LAUGHLIN STEEL CORPORATION, et al.	)	
	)	
	)	
Appellees	)	

PETITION FOR STAY OF PROCEEDINGS

AND NOW comes plaintiff-appellant, V. P. Gottschall, and in support of the Petition for a Stay of Proceedings in the action pending in the Allegheny County Court of Common Pleas at GD80-26963 says:

1. On January 9, 1981 an appeal was taken from an Order (a copy of which is attached hereto as Exhibit 1) signed by Judge Silvestri on December 30, 1980

in the case pending at GD80-26963. The appeal has been docketed as No. 59 Pittsburgh 1981.

2. By a letter dated March 26, 1981, Judge Silvestri notified the parties that a hearing would be held, on the reciprocal motions for disqualification which were filed in the case, on April 31, 1981.

3. On April 9, 1981 in a status conference, Judge Silvestri told the parties his secretary had made a mistake in the letter of March 26, 1981 and the hearing would be held at 9:30 a.m. on April 14, 1981.

4. The right to consult freely with counsel and other experts (the denial of which is the basis of the appeal) is a fundamental precept of justice and the lower court should not be permitted to proceed until this Court

can consider the propriety of the order. At that status conference the attorney for plaintiff-appellant voiced his objection to proceeding before the determination of the appeal to the Superior Court. Counsel for defendants-appellees asserted that the hearing scheduled for April 14, 1981 would be permissible because the appeal deals only with the order denying plaintiffs' access to counsel.

6. Judge Silvestri stated that the hearing would be held on April 14, 1981 and he would wrestle with whatever problems that might entail at that time.

7. Plaintiffs aver that formal application to Judge Silvestri is not practicable.

8. Because the order from which an appeal was taken was entered on the basis of ex parte presentations in the

Judge's Chambers and there have been no formal hearings, there is no record as such. As of this date Judge Silvestri has not, as required by Rule 1925, filed a statement of the reasons for the order.

Respectfully submitted,

BY s/ V. P. Gottschall
V. P. Gottschall
Attorney for plaintiff-appellant
9351 Tanbark Drive
Pittsburgh, PA 15237

IN THE SUPERIOR COURT OF
PENNSYLVANIA
Sitting at Pittsburgh

V. P. Gottschall, et al.	)	
	)	
Appellants	)	
	)	
vs.	)	No. 59
	)	Pittsburgh,
	)	1981
JONES & LAUGHLIN STEEL CORPORATION, et al.	)	
	)	
	)	
Appellees	)	

ORDER OF COURT

AND NOW, to wit, this 13th day of April, 1981, upon consideration of appellants' petition for stay and appellee's answer thereto, inasmuch as an appeal is pending in this matter in this Court and none of the exceptions of Pa. R.A.P. 1701(b) or (c) appear to apply, the hearing scheduled in this matter before the Honorable Judge Silvestri Silvestri on April 14, 1981, is hereby stayed.

Nothing in this order shall be construed as an indication that this Court deems the order appealed is final and appealable.

PER CURIAM

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

V. P. GOTTSCHALL	)	
	)	
Plaintiff,	)	
	)	
vs.	)	GD80-32049
	)	
JONES & LAUGHLIN STEEL CORPORATION,	)	
	)	
	)	
Defendant	)	

AND NOW, to wit, this 29th day of January, 1981, upon consideration of the January 29, 1981 Motion filed by Jones and Laughlin Steel Corporation ("J & L"), it is hereby ordered that, until further order of court: (1) J & L's Petition for Disqualification of Mr. Gottschall, the Affidavits of D.T. Kalil and J.P. Kelly with attached exhibits and J & L's Brief supporting its Petition for Disqualification of Mr. Gottschall, be kept confidential and

under seal such that they are not made part of the public record in this case and (2) Mr. Gottschall and any other counsel of record for Mr. Gottschall in this action refrain from disclosing to any third party the nature or contents of those parts of the record made confidential by the within order; provided, that Mr. Gottschall and any other counsel of record for plaintiff in this action may disclose the nature or contents of those parts of the record made confidential by this order if (i) such disclosure is limited to an attorney being consulted for purposes of possibly becoming additional counsel of record for plaintiff in this action, (ii) such disclosure is made only after prior written notice to counsel of record for J & L of the name and address of the attorney to whom such disclosure

is proposed to be made and (iii) such disclosure is made only to an attorney who is not presently involved in any other litigation concerning J & L and who agrees to be bound by the terms of this order.

By the Court

/s/ Silvestri, J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

V. P. Gottschall, et al.	)	
	)	
Plaintiffs	)	
	)	
vs.	)	GD80-26963
	)	
	)	
JONES & LAUGHLIN STEEL CORPORATION, et al.	)	
	)	
	)	
Defendants	)	

AND NOW, to wit, this 30 day of December, 1980, upon consideration of defendant's December 29, 1980 Motion, it is hereby ordered that, until further order of court: (1) defendants' Petition for Disqualification, the Affidavit of D.T. Kalil with attached exhibits, the Affidavit of J.P. Kelly and defendants' Brief supporting its Petition for Disqualification as well as any responsive proceedings relating to

defendants' Petition for Disqualification be kept confidential and under seal such that they are not made part of the public record in this case, and (2) Mr. Gottschall and any other counsel of record for plaintiff in this action refrain from disclosing to any third party the nature or contents of those parts of the record made confidential by the within order.

By the Court

/s/ Silvestri, J.

Exhibit A

J&L
STEEL

NEWS RELEASE

P- -76

July 14, 1976

PITTSBURGH, Pa. -- Jones & Laughlin Steel Corporation has announced three personnel appointments in its law department.

Victor P. Gottschall, J. Peter Kelly and Thaddeus A. Zalenski have been appointed to the newly created positions of assistant general counsel.

Gottschall joined J&L as an attorney in 1969 and was named general attorney and assistant secretary in 1971.

A native of Pittsburgh, he attended Harvard University and received a

bachelor of arts degree in government in 1963 and a J.D. degree in law in 1966.

He is a member of the American Bar Association, the Pennsylvania Bar Association and the Allegheny Bar Association.

Kelly began his J&L career in 1963 as an industrial engineer trainee and has held various industrial engineering positions. In 1971 he became a legal assistant, in 1972 he was named attorney and in 1974 he was appointed general attorney for the legal division.

A native of Easton, Massachusetts, he received a bachelor of arts degree in chemistry from Harvard University in 1963 and a J.D. degree from Duquesne University in 1972.

He is a member of the Harvard University Society of Chemists, the Allegheny Bar Association and the Labor Law Section of the American Bar Association.

Zalenski joined J&L in 1966 as an attorney.

A native of East Vandergriff, he received a bachelor of science degree oil petroleum and natural gas engineering from Pennsylvania State University in 1959 and an L.L.B. degree from Georgetown University in 1966.

He is a member of the Pennsylvania Bar Association.

# # #

Exhibit B

POST-GAZETTE

December 30, 1980

Shareholder sues
to dissolve J&L

Former Jones & Laughlin Steel Corp. attorney Victor P. Gottschall petitioned for the dissolution of the firm yesterday, arguing that its owners are not running it as a separate firm.

In a petition filed in Common Pleas Court, Gottschall suggested that a receiver be appointed for the steel firm's assets and that holders of preferred stock receive $100 for each of their shares. He is the owner of 20 shares.

Gottschall's court petition was directed primarily against Dallas-based LTV Corp.-which owns all the stock of

Jones & Laughlin Industries, the owner of all J&L common stock.

As sole beneficial owner of J&L common stock, LTV "has demonstrated its desire to eliminate J&L as a separate corporation both by causing J&L to be run as a division, rather than a separate corporation, and by trying to eliminate or drastically curtail trading in the publicly held stock of J&L" Gottschall charged.

The last charge was a repeat of one made by Gottschall against LTV in suits filed in September and October.

Exhibit C

AFFIDAVIT OF V.P. GOTTSCHALL

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

Promptly after the entry of Judge Silvestri's Order of December 30, 1980 and at various times thereafter, I contacted attorneys in an effort to secure counsel in both that case (now on appeal at No. 59 Pittsburgh 1981) and later the case now on appeal at No. 267 Pittsburgh 1981. The reaction was that the orders were clearly improper and no one would agree to be bound by the terms of the orders. The most frequent "advice" was that I call a press conference, disclose the documents, and see if Jones & Laughlin Steel Corporation or Judge Silvestri would do

anything. Although a proceeding for contempt would have directly raised the First Amendment issue, I chose not to follow that advice. While there may be lawyers willing to accept the terms of the order and represent me I have not found them and believe they would be less "qualified" than those who urged me to violate the orders to clearly focus the issue.

s/ V.P. Gottschall

V. P. Gottschall

Sworn to and subscribed before
me this 20th day of September, 1984.

s/Rose Ann Mulkern

Notary Pubic

ROSE ANN MULKERN
Pittsburgh, Allegheny County, Pa.
My Commission Expires Mar. 18, 1985